7848

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 108.

OHIO VALLEY NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

JOHN HULITT, RECEIVER OF THE FIRST NATIONAL BANK OF HILLSBORO, OHIO.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

FILED AUGUST 30, 1905.

(19,891.)

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INDEX.

	Original.	Print.
Caption	a	1
Transcript from the circuit court of the United States for the southern district of Ohio	1	1
Caption	1	1
Petition	1	1
Præcipe for summons	4	4
Summons	4	4
Marshal's return	5	5
Answer	5	5
Order for continuance	7	8
Deposition of Henry Oetjen (omitted in printing)	7	—
Judgment	24	8
Motion for new trial	24	7
Order overruling motion for new trial	25	7
Order filing bill of exceptions	25	7
Bill of exceptions	25	7
Agreed statement of facts	26	8
Exhibit A—Note of O. S. Price, March 18, 1893	28	9

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 26, 1906.

	Original.	Print.
Petition for writ of error	29	10
Assignment of errors	30	11
Order allowing writ of error	30	11
Bond on writ of error	31	11
Clerk's certificate	32	12
Citation	33	14
Appearance for plaintiff	35	15
Stipulation to correct agreed statement of facts	36	15
Argument and submission	37	16
Judgment	38	16
Opinion	40	17
Petition for writ of error	47	22
Order allowing writ of error	49	22
Assignment of errors	50	23
Bond on writ of error	53	24
Order allowing writ of error, &c	55	25
Writ of error	56	25
Citation and service	57	26
Clerk's certificate	58	27
Designation of parts of record to be omitted and consent thereto	59	27

a

No. 1386.

United States Circuit Court of Appeals, Sixth Circuit.

JOHN HULITT, Receiver of the First National Bank of Hillsboro, Ohio, Plaintiff in Error,
vs.
OHIO VALLEY NATIONAL BANK, Defendant in Error.

Error to the Circuit Court of the United States for the Southern District of Ohio.

Record.

Original Transcript Filed December 10, 1904.

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

At a stated term of the Circuit Court of the United States of America, within and for the Western Division of the Southern District of Ohio, in the Sixth Judicial Circuit of the United States of America, begun and had in the court rooms at the city of Cincinnati, O., in said district, on the first Tuesday of October, being the fourth day of that month in the year of our Lord one thousand nine hundred and four, and of the independence of the United States of America, the one hundred and twenty-eighth.

Present, the Honorable Albert C. Thompson, District Judge, sitting and holding circuit court.

Among the proceedings had were the following, to-wit:

Petition.

JOHN HULITT, as Receiver of the First National Bank of Hillsboro, Ohio, Plaintiff,
vs.
THE OHIO VALLEY NATIONAL BANK, Defendant.

Be it remembered that heretofore, to-wit, on the 8th day of October in the year of our Lord one thousand nine hundred, came the plaintiff by his attorneys and filed in the clerk's office of the court aforesaid his certain petition in this cause against the defendant, which said petition was clothed in the words and figures following, to-wit:

United States Circuit Court, Southern District of Ohio, Western Division, *ss:*

Petition.

JOHN HULITT, Receiver, etc.,
vs.
THE OHIO VALLEY NATIONAL BANK.

The plaintiff states:

1. The First National Bank of Hillsboro, Ohio, is a banking association duly incorporated under the laws of the United
2 States for the creation and government of national banking associations. Its banking house was at Hillsboro, Ohio, and it was there engaged in the business of banking until the 16th day of July, A. D. 1896, at which last mentioned date it suspended payment and closed its doors.

2. On the 22nd day of July, A. D. 1896, the comptroller of the currency of the United States, in accordance with said laws for the government of national banking associations, and with the concurrence of the secretary of the treasury of the United States, duly appointed the plaintiff receiver of the said The First National Bank of Hillsboro, Ohio, and the plaintiff thereupon qualified as such receiver and took possession of the assets of said bank, and is now engaged in the administration of said trust.

3. On the 27th day of April, A. D. 1897, the said comptroller of the currency duly and regularly made an assignment and demanded, under his official seal, and in pursuance of sections 5131 and 5234 of the Revised Statutes of the United States, upon all the shareholders of said bank for one hundred thousand dollars ($100,000), to be paid by them ratably on or before the 27th day of May, A. D. 1897, and upon each and every shareholder of said bank for one hundred dollars ($100.00) upon each share of the capital stock of said bank held or owned by them respectively at the time of the failure of said bank.

4. At the time of the failure of said bank, twenty shares of the capital stock thereof were in the name of one Henry Oetjen on the stock register of said bank, and certificates therefor were held by said Oetjen. But the said Oetjen was not the owner of said shares, but the same were in fact owned by the defendant.

5. One Overton S. Price had been the owner of said twenty shares of the capital stock of said bank, but had pledged them with the defendant as collateral security for a loan obtained by him from the defendant. By the terms of the contract between said Price and the defendant, whereby said loan was obtained and said shares made security therefor, if said loan was not paid and when due the defendant had the right to sell said shares and apply the proceeds of the sale upon said debt. Said Price having failed to pay said loan when due, the defendant apparently sold said shares to said Oetjen. Such sale being reported to the said First National Bank of Hills-

boro, Ohio, said shares of stock were, by the officers of said bank, transferred to said Oetjen.

6. Said purchase by said Oetjen was for and in behalf of
3 the defendant. Said Oetjen was, at the time he ostensibly bought said stock, and he still is an employee of the defendant. In said purchase of said shares he really acted for and as the agent of the defendant. The only consideration paid for said shares was the credit by the defendant upon said loan of Price of the amount for which said stock was bid off by said Oetjen, less the expense of said sale, said facts relating to said agents of Oetjen, and that his purchase of said stock was for the defendant, and that the defendant was and is the real owner thereof, were unknown to the officers of the First National Bank of Hillsboro, when they caused the transfer of said shares to be made to said Oetjen, and they have only recently become known to the plaintiff.

7. The defendant is a banking association duly organized under the laws of the United States for national banking associations, and as such is engaged in the business of banking, having its banking house at Cincinnati in said State, District and Division.

The plaintiff duly notified said Oetjen of said assessment on or about the 3rd day of May, A. D. 1897.

Neither the defendant or the said Oetjen has paid said assessment or any part thereof. Said Oetjen is pecuniarily irresponsible and wholly unable to pay said assessment.

By reason of said premises there is due from the defendant to the plaintiff as receiver as aforesaid the sum of two thousand dollars ($2,000), with interest thereon from the 27th day of May, A. D. 1897, at the rate of six per cent. per annum, and for which plaintiff asks judgment.

HENRY M. HUGGINS,
CHARLES W. SCOTT,
Attorneys for Plaintiff.

UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division:

John Hulitt, being sworn, says that he believes the averments of his foregoing petition as receiver of the First National Bank of Hillsboro, Ohio, to be true.

JOHN HULITT,
Receiver The First National Bank of Hillsboro, Ohio.

Sworn to before me and signed in my presence this first day of October, A. D. 1900.

[SEAL.] S. D. WIGGINS,
Notary Public, Hamilton Co., Ohio.

4 And afterwards, to-wit, on the same day came the plaintiff by his attorneys, and filed in the clerk's office of the court aforesaid his certain præcipe in said cause, which said præcipe is clothed in the words and figures following, to-wit:

Præcipe.

To Clerk:

Please issue a summons for the defendant directed to the marshal of said court, returnable according to law.

Amount claimed, two thousand dollars, with interest from April 27th, A. D. 1897, at the rate of six per cent., per annum.

HENRY M. HUGGINS,
CHARLES W. SCOTT,
Attorneys for Plaintiff.

And thereupon there was issued out of the clerk's office of said court our certain writ of summons in this case, directed to the marshal of this district and against the said defendant, which said summons is clothed in the words and figures following, to-wit:

Summons.

UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

The President of the United States of America to the Marshal of the Southern District of Ohio, Greeting:

You are hereby commanded to notify The Ohio Valley National Bank, a banking association duly organized under the laws of the United States, located at Cincinnati, Ohio, defendant, citizen of and resident in the State of Ohio, if it be found in your district, that it has been sued by John Hulitt, as receiver of the First National Bank of Hillsboro, Ohio, plaintiff, citizen of and resident of the State of Ohio in the United States Circuit Court, within and for the district and division aforesaid, at Cincinnati, and that unless it answer by the 10th day of November, A. D. 1900, the petition of the said plaintiff against it filed in the clerk's office of said court, such petition will be taken as true and judgment rendered accordingly.

5 You will make due returns of this summons on the 22nd day of October, A. D. 1900.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 8th day of October, A. D. 1900, and in the 125th year of the independence of the United States of America.

Attest:

[SEAL.] B. R. COWEN, *Clerk*,
By ROBERT C. GEORGI, *Deputy*.

And afterwards, to-wit, on the 10th day of October, in the year last aforesaid, came the marshal of said district to whom the said writ was in form directed and returned the same into the clerk's office of the court aforesaid with his proceedings endorsed thereon, clothed in words and figures following, to-wit:

Marshal's Return.

Received this writ on the 9th day of October, A. D. 1900, and on the 9th day of October, A. D. 1900, I served the Ohio Valley National Bank by handing a true copy thereof with the endorsement thereon to Clifford B. Wright, Vice President of said Ohio Valley National Bank personally.

VIVIAN J. FAGIN, *Marshal,*
By W. J. SANDERSON, *Deputy.*

Fees, total, $2.62.

And afterwards, to-wit, on the 10th day of November, A. D. 1901, an answer was filed in the clerk's office of said court clothed in the words and figures following, to-wit:

Answer.

JOHN HULITT, as Receiver of the First National Bank of Hillsboro, Ohio, Plaintiff,

vs.

THE OHIO VALLEY NATIONAL BANK, Defendant.

Defendant, for answer to the petition, states:

1. It admits that the First National Bank of Hillsboro, Ohio, is a banking association, organized as alleged, doing business at
6 Hillsboro, Ohio, and that it suspended payment as alleged.

2. For want of knowledge it denies the allegations in the second paragraph of the petition.

3. For want of knowledge it denies each and every allegation of the third paragraph of the petition.

—. It admits that, at the time of the failure of said bank, twenty (20) shares of stock were in the name of Henry Oetjen on the stock register of said bank, and that certificates therefor were held by said Oetjen, but denies that said Oetjen was not the owner of said shares, and it denies that said shares were owned by this defendant.

5. Defendant admits each and every allegation contained in the fifth paragraph of the petition and defendant further answering said fifth paragraph of the petition states that said shares were in fact as well as apparently sold to said Oetjen.

6. Defendant admits that said Oetjen was and is one of its employés as alleged, and denies each and every other allegation in said sixth paragraph of the petition.

7. Defendant admits that it is a Banking Association as alleged; that the plaintiff notified said Oetjen of said assessment as alleged and that said assessment has not been paid. For want of knowledge it denies that said Oetjen is pecuniarily irresponsible and unable to pay said asessment. Defendant denies that it is indebted to the plaintiff in the sum of Two Thousand (2000) Dollars with interest or in any sum whatever.

Wherefore defendant prays to hence be dismissed with its costs.

JAMES J. MUIR,
MAXWELL & RAMSEY,
Attorneys for Defendant.

UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division:

H. O. Tudor being duly sworn says that he is the Cashier of the Ohio Valley National Bank, defendant herein, and that he believes the averments of the foregoing answers are true.

O. H. TUDOR.

Sworn to before me and subscribed in my presence this 10th day of November, 1900.

[SEAL.] CHAS. C. BENEDICT,
Notary Public, Hamilton —, Ohio.

7–23 And afterwards, to-wit: on the 2nd day of October A. D. 1901, an Entry was made upon the journal of said Court clothed in the words and figures following, to-wit:

Entry J. 6—P. 303.

For good cause shown this cause is hereby continued to the next term of this court.

* * * * * * *

24 And afterwards, to-wit, on the 6th day of October, A. D. 1904, an entry was made upon the journal of said court clothed in the words and figures following, to-wit:

Entry J. 7—P. 474.

This cause coming on to be heard was submitted to the court, upon an agreed statement of facts, the parties having waived a jury in the premises. The court, upon consideration of the pleading, evidence and arguments of counsel, finds the issues joined in favor of the defendant.

It is therefore ordered, adjudged and decreed that the defendant go hence without day and recover its costs herein expended. To all of which the plaintiff, by his counsel, excepts.

And afterwards, to-wit, on the 6th day of October, A. D. 1904, a motion for a new trial was filed in the clerk's office of said court clothed in the words and figures following, to-wit:

Motion.

JOHN HULITT, Receiver, etc., Plaintiff,
vs.
THE OHIO VALLEY NATIONAL BANK, Defendant.

Now comes the plaintiff and moves the court here for a new trial in the above entitled cause, on the following grounds:

1. The finding of the court is against the facts as shown by the agreed statement of facts upon which cause was tried.
25 2. The finding of the court is against the law of the case of the agreed statement of facts on which the case was tried.
3. The judgment of the court should have been for the plaintiff instead of the defendant.

HENRY M. HUGGINS,
Attorney for Plaintiff.

And afterwards, to-wit: on the 6th day of October, A. D. 1904. An entry was made upon the Journal of said Court clothed in the words and figures following, to-wit:

J. 7—P. 474.

This cause coming on to be heard, on plaintiff's motion for a new trial the Court upon consideration finds the same not well taken, and it is ordered that said motion be, and the same is hereby overruled, to which the plaintiff by his counsel excepts.

And afterwards, to-wit; on the 14th day of November A. D. 1904, an entry was made upon the Journal of said Court clothed in the words and figures following, to wit:

Entry J. 7—P. 505.

Now comes the plaintiff and presents his Bill of Exceptions, which is allowed, signed, sealed, and made part of the record.

And afterwards, to-wit on the 14th day of November, A. D. 1904 a Bill of Exceptions was filed in the Clerk's office of said Court clothed in the words and figures following, to-wit:

Bill of Exceptions.

JOHN HULITT, as Receiver of the First National Bank of Hillsboro, Ohio, Plaintiff,
vs.
THE OHIO VALLEY NATIONAL BANK, Defendant.

Be it remembered that at the trial of this cause at the October term of the Circuit Court of the United States for the South-
26 ern District of Ohio, Western Division, beginning on the first Tuesday of said month A. D. 1904, the plaintiff and the

defendant to maintain the issues on their respective parts, offered in evidence an agreed statement of facts, in writing, and signed by said parties, as and for the evidence submitted by them respectively upon the issues joined in this cause. Said agreed statement was all the evidence submitted and offered by the said parties and considered by said Court upon the trial of said cause. Said agreed statement of facts is as follows:

"In the Circuit Court of the United States for the Southern District of Ohio, Western Division.

JOHN HULITT, as Receiver of the First National Bank of Hillsboro, Ohio, Plaintiff,

vs.

THE OHIO VALLEY NATIONAL BANK, Defendant.

Agreed Statement of Facts.

1. On March 18th, 1893, one Overton S. Price, procured a loan from the defendant in the sum of ten thousand ($10,000) dollars, giving his promissory note therefor together with certain collateral securities recited in the body of said note, copy of which note, with all endorsements thereon, is hereto attached, made part hereof, and marked "Exhibit A."

2. On December 25th, 1893, said Price deceased, leaving said note at that time past due and unpaid. No payments have ever been made upon said note, except as hereinafter set forth. There is still a balance remaining due and unpaid upon said note.

3. On June 18th, 1894, the defendant made a formal transfer of the pledged stock of The First National Bank of Hillsboro, Ohio, and The Dominion National Bank of Bristol, Va., to one Henry Oetjen, an employee of the defendant, who was pecuniarily irresponsible. Said shares were transferred upon the books of said banks respectively and new certificates therefor issued in the name of said Oetjen, and delivered to him on July 7th, 1894. No money consideration passed to the defendant for said transfer and none
27 was expected nor did the defendant at that time credit said note with any sum by reason of said transfer, nor was any credit at that time endorsed upon said note, or entered in defendant's books. Said Oetjen endorsed in blank the certificates of stock which were issued to him.

4. Said transfer was made upon the understanding and agreement between said Oetjen and the defendant that the former should hold said stock as a security for the indebtedness of the estate of said Price upon said note, applying any amounts which he might realize from said stock as credits upon said note; that in pursuance of this agreement and understanding said Oetjen subsequently paid the defendant, on account of said note, a sum of money received by him from said Dominion National Bank on account of certain dividends which he received from time to time upon said Dominion National Bank stock until the same was finally sold by said Oetjen, where-

upon the proceeds of said sale were likewise applied by him upon said note.

5. That on February 19th, 1896, the defendant prepared proof of claim against the estate of said Price and at that time, believing the stocks transferred to said Oetjen to afford a reasonable security for said Exhibit A to the amount of forty-four hundred and eighty-four ($4,484.00) dollars, endorsed the credit for that amount upon said note, which appears upon Exhibit A, and filed its proof of claim against said estate for the balance of the indebtedness upon said note; that no consideration was paid for said credit and the same was not entered upon defendant's books; that all dividends arising upon said distribution of the estate of said Price were applied upon said note.

6. That said First National Bank of Hillsboro, Ohio, continued to do business until July 16th, 1896; that from the date of said transfer the stock in said bank at all times appeared on the books of said bank in the name of said Oetjen, that there was nothing on the books of said bank at any time to connect this defendant with said stock or to indicate that this defendant had any interest whatever in the same; that defendant at no time performed any act of ownership of said stock or exercised, or attempted to exercise, any of the rights of a stockholder of said bank or of the Dominion National Bank of Bristol, Va., unless the acts above set forth were, according to legal intendment, of that character. Defendant caused said shares to be transferred to said Oetjen because it was unwilling to assume the risk of the statutory liabilities of a stockholder in respect to said shares.

It is agreed that this cause may be tried *to* the Court,
28 without the intervention of a jury upon the foregoing agreed statement of facts.

Done at Cincinnati, Ohio, this 5th day of May, 1903.

ROBERT RAMSEY,
JAS. J. MUIR,
Attorney- for Defendant.
HENRY M. HUGGINS,
CHARLES SCOTT,
Attorneys for Plaintiff.

"EXHIBIT A."

$10,000. X. CINCINNATI, O., *March 18th,* 1893.

Ninety days after date I promise to pay Myself or order, Ten Thousand Dollars for Value Received, payable at the Office of A. C. Conklin & Co., having deposited or pledged as collateral security for the payment of this note,

50 shrs. Citizens Nl. Bk. Stock, Hillsboro, O.,	shrs.	$100
20 shrs. First Nl. Bk. Stock, Hillsboro, O.,	shrs.	100
40 shrs. Hillsboro Gas Light Co. Stock,	shrs.	50
30 shrs. Dominion Nl. Bk. Stock, Bristol, Va.,	shrs.	100
100 shrs. Bk. of Camden Stock, Camden, O.,	shrs.	100
200 shrs. Bk. of Lynchburg Stk., Lynchburg, O.,	shrs.	50

And I hereby give to the holder thereof full power and authority to sell or collect at my expense all or any part or portion thereof, at any place, either in the City of Cincinnati, or elsewhere, at public or private sale at holder's option, on the non-performance of the above promise, and at any time thereafter, and without advertising the same or otherwise giving to me any notice. In case of public sale the holder may purchase without being liable to account for more than the net proceeds of such sale.

O. S. PRICE.

Endorsed—O. S. Price.

Forty-four hundred and eighty-four ($4,484.00) Dolls. paid on ac. of within note June 18, '94, being proceeds of sale of 30 shrs. stock Dominion Natl. Bank and 20 shares of stock 1st National Bk. of Hillsboro, O.

A jury having been waived by said parties, and the Court having found for and rendered judgment for the defendant, to
29 which finding and judgment the plaintiff excepted, and the plantiff having within three days from the date of said trial made a motion for a new trial which was overruled by the court, to which judgment of the Court in overruling said motion the plaintiff excepted, the plaintiff tenders this, his Bill of Exceptions, which is allowed, signed, sealed, and ordered to be made part of the record.

And afterwards, to-wit: on the 14th day of November, A. D. 1904, a petition of error was filed in the Clerk's office of said Court clothed in the words and figures following, to-wit:

At Law. No. 5486.

JOHN HULITT, Receiver of The First National Bank of Hillsboro, Ohio, Plaintiff,

vs.

THE OHIO VALLEY NATIONAL BANK, Defendant.

Petition for Writ of Error.

And now comes John Hulitt, receiver of the First National Bank of Hillsboro, Ohio, plaintiff, herein, and says that on or about the 6th day of October, 1904, this court entered judgment herein in favor of the defendant and against this plaintiff, in which judgment and the proceedings had prior thereto in this cause certain errors were committed, to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays that a writ of error may issue in this behalf to the United States Circuit Court of Appeals for the Sixth Circuit, for the correction of errors so complained of, and that a transcript of the record proceedings, and papers in this cause duly authenticated, may be sent to the said Circuit Court of Appeals.

HENRY M. HUGGINS,
Attorney for Plaintiff.

30 And afterwards, to-wit: on the 14th day of November, A. D. 1904, an Assignment of Errors was filed in the Clerk's Office of said Court clothed in the words and figures following, to-wit:

Assignment of Errors.

At Law. No. 5486.

JOHN HULITT, Receiver of The First National Bank of Hillsboro, Ohio, Plaintiff,
vs.
THE OHIO VALLEY NATIONAL BANK, Defendant.

The plaintiff in this action, in connection with this petition for a writ of error, makes the following assignment of errors which he avers occurred upon trial of the cause, to-wit:

I. The court erred in its finding that the law of the agreed statement of facts was against the plaintiff and in favor of the defendant.

II. The court erred in overruling the motion of plaintiff for a new trial.

III. The court erred in entering judgment in favor of the defendant and against plaintiff.

HENRY M. HUGGINS,
Attorney for Plaintiff.

And afterwards to-wit on the 14th day of November, A. D. 1904, an Entry was made upon the journal of said Court clothed in the words and figures following, to wit:

Entry J. 7—P. 505.

This day comes the plaintiff by its attorney and presents to the court, and files in this suit its petition praying for the allowance of a writ of error to the United States Circuit Court of Appeals held in Cincinnati, Ohio, for the Sixth Circuit; together with its assignment of errors in such behalf; and for satisfactory reasons to the court appearing the prayer of the said petition is hereby granted and such writ of error awarded, together with the usual citation in such case, upon the said plaintiff giving a supersedeas bond with good security according to law in the penal sum of $300.00.

31 And afterwards, to-wit: on the 30th day of November A. D. 1904, a bond was filed in the Clerk's Office of said Court, clothed in the words and figures following, to-wit:

Bond on Writ of Error.

Know all men by these presents, that we, John Hulitt Receiver of the First National Bank of Hillsboro, Ohio, as principal, and H. W. Roads and Isma Troth, as sureties are held and firmly bound unto

The Ohio Valley National Bank a banking association organized under the laws of the United States in the full and just sum of Three Hundred Dollars to be paid to the said The Ohio Valley National Bank a banking association as aforesaid certain attorneys executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 29th day of November in the year of our Lord one thousand nine hundred and four.

Whereas lately at a session of the Circuit Court of the United States within and for the Western Division of the Southern District of Ohio, in a suit depending in said Court, between John Hulitt, Receiver as aforesaid and The Ohio Valley National Bank a banking association as aforesaid, a judgment was rendered against the said John Hulitt, Receiver as aforesaid, and the said John Hulitt aforesaid having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Ohio Valley National Bank a banking association as aforesaid citing and admonishing it to be and appear at a session of the United States Circuit Court of Appeals for the Sixth Circuit, to be holden at the city of Cincinnati, in said circuit, on the Twenty-eight- day of December next.

Now the condition of the above obligation is such, that if the said John Hulitt, Receiver as aforesaid shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JOHN HULITT. [SEAL.]
H. W. ROADS. [SEAL.]
ISMA TROTH. [SEAL.]

Approved by:
A. C. THOMPSON,
Judge of United States District Court for Southern District of Ohio, Sitting and Holding United States Circuit Court.

32 THE UNITED SATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

I, Benjamin R. Cowen, Clerk of the Circuit Court of the United States, within and for the District and Division aforesaid, do hereby certify that the foregoing is a true and complete Transcript of the proceedings had by and before said Court in the above entitled cause as the same appears of record and on file in said Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Cincinnati, Ohio, this 1st day of December, A. D. 1904.

B. R. COWEN, *Clerk,*
By ROBT. C. GEORGI, *Deputy Clerk.*

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

The President of the United States to the Honorable the Judge of the Circuit Court of the United States for the Southern District of Ohio, Western Division—Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between John Hulitt, Receiver of the First National Bank of Hillsboro, Ohio, and The Ohio Valley National Bank a banking association organized under the laws of the United States, a manifest error hath happened, to the great damage of the said John Hulitt, Receiver of the First National Bank of Hillsboro, Ohio, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things, concerning the same, to the United States Circuit Court of Appeals for the Sixth Circuit, together with this writ, so that you have the same at Cincinnati, in said Circuit, on the * 28th day of December next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to cor-
33 rect that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the 30th day of November, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States of America the one hundred and twenty-ninth.

B. R. COWEN,
Clerk of the Circuit Court of the United States,
Southern District of Ohio.
By ROBT. C. GEORGI, *Deputy.*

Allowed by,
HON. A. C. THOMPSON,
Judge of United States District Court for Southern District of Ohio, Sitting and Holding United States Circuit Court.

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*Not exceeding 30 days from the day of signing the citation.

No. 5486. United States Circuit Court, Southern District of Ohio Western Division. John Hulitt, Receiver *vs.* The Ohio Valley National Bank. Writ of Error. Filed Nov. 30, 1904. B. R. Cowen, Clerk.

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

To the Ohio Valley National Bank a banking association organized under the laws of the United States, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Sixth Circuit, to be holden at the city of Cincinnati, in said circuit, on the * 28th day of December next, pursuant to a Writ of Error, Filed in the Clerk's Office of the Circuit Court of the United States for the Southern District of Ohio, Western Division, wherein John Hulitt, Receiver of the First National Bank of Hillsboro, Ohio, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

34 Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the 30th day of November, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States of America the one hundred and twenty-ninth.

A. C. THOMPSON,
Judge of United States District Court for Southern District of Ohio, Sitting and Holding United States Circuit Court.

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*Not exceeding 30 days from the day of signing.

Citation hereby waived and appearance entered.
OHIO VALLEY NATIONAL BANK,
By ROBERT RAMSEY, *Att'y.*

December 5, 1904.

No. 5486. United States Circuit Court, Southern District of Ohio, Western Division. John Hulitt, Receiver *vs.* The Ohio Valley National Bank. Citation. Filed Dec. 6, 1904. B. R. Cowen, Clerk. Error bond filed.

35 United States Circuit Court of Appeals, Sixth Circuit.

And afterwards, to-wit: on the 15th day of December, A. D. 1904 an appearance was filed in said court, clothed in the words and figures following, towit:

United States Circuit Court of Appeals for the Sixth Circuit.

No. 1386.

JOHN HULITT, Receiver, etc.,
vs.
OHIO VALLEY NATIONAL BANK.

Frank O. Loveland, Clerk of said Court:

Please enter my appearance as Counsel for the plaintiff.

(Signed) HENRY M. HUGGINS.

And afterwards, to-wit: on the 12th day of April, A. D. 1905, a stipulation was filed in said court, clothed in the words and figures following, to-wit:

36 United States Circuit Court of Appeals, Sixth Circuit.

No. 1386.

JOHN HULITT, Receiver of the First National Bank of Hillsboro, O.,
vs.
THE OHIO VALLEY NATIONAL BANK.

Stipulation.

It is hereby stipulated and agreed that the following words in the "Agreed statement of facts" inadvertently omitted in the transcript and printed record be inserted therein so as to conform to the original "agreed statement of facts" as signed and filed in the Court below; to-wit:

In the fourth paragraph of said "agreed statement of facts" there be inserted after the words "received by him" the words "from said Dominion National Bank an account of a reduction in the capital stock and also the amount of certain dividends which he received."

In the sixth paragraph of said "agreed statement of facts" there be inserted after the words "books of said bank" the words "in the name of said Oetjen, there was nothing on the books of said bank."

(Signed) HENRY M. HUGGINS,
Attorney for Plaintiff in Error.

(Signed) JAMES J. MUIR AND
ROBERT RAMSEY,
Attorneys for Defendant in Error.

Cincinnati April 12, 1905.

37 And afterwards, to-wit: on the 13th day of April, A. D. 1905, the following entry was made on the Journal of said Court, clothed in the words and figures following, to-wit:

Journal C, page 164.

Court met pursuant to adjournment. Present Honorables Horace H. Lurton, Henry F. Severens and John K. Richards, JJ.

No. 1386.

JOHN HULITT, Receiver First National Bank of Hillsboro, Ohio,
vs.
OHIO VALLEY NATIONAL BANK.

This cause is argued for plaintiff in error by Mr. Henry M. Huggins and for defendant in error by Mr. Robert Ramsey and is submitted to the Court.

And afterwards, to-wit: on the 2nd day of May, A. D. 1905, an entry was made on the Journal of said Court, clothed in the words and figures following, to wit:

Journal C, page 169.

38 United States Circuit Court of Appeals for the Sixth Circuit.

No. 1386.

JOHN HULITT, Receiver of the First National Bank of Hillsboro, Ohio,
vs.
OHIO VALLEY NATIONAL BANK.

Error to the Circuit Court of the United States for the Southern District of Ohio.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Ohio, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said Circuit Court, in this cause be and the same is hereby reversed with costs and the cause is remanded to the said Circuit Court with directions to enter a judgment for the plaintiff for the amount of the assessment with interest from May 27th, 1897.

39 And afterwards, to-wit: on the 11th day of May A. D. 1905 an opinion was filed, clothed in the words and figures following, to-wit:

Opinion.

40 Filed May 11, 1905. Frank O. Loveland, Clerk.

No. 1386.

United States Circuit Court of Appeals, Sixth Circuit.

JOHN HULITT, Receiver of the First National Bank of Hillsboro, Ohio, Plaintiff in Error,
v.
OHIO VALLEY NATIONAL BANK, Defendant in Error.

Error to the Circuit Court of the United States for the Southern District of Ohio.

Submitted April 13, 1905; Decided May 2, 1905.

Before LURTON, SEVERENS and RICHARDS, Circuit Judges.

SEVERENS, Circuit Judge, delivered the opinion of the Court.

This suit was brought by the plaintiff in error, who is the receiver of the First National Bank of Hillsboro, Ohio, to recover an assessment levied by the Comptroller of the Currency upon the shareholders of the bank on acount of their extraordinary liability to creditors, the bank having become insolvent. The defendant in error is charged as the owner of twenty shares of the stock of the Hillsboro bank. To the petition the defendant filed an answer making a general denial of the plaintiff's allegations, in respect to its ownership of the stock. The case was heard in the court below upon an agreed statement of facts, which is embodied in a bill of exceptions and is as follows:

41 1. On March 18th, 1893, one Overton S. Price, procured a loan from the defendant, in the sum of ten thousand (10,000) dollars, giving his promissory note therefor together with certain collateral securities recited in the body of said note, a copy of which note, with all endorsements thereon, is hereto attached, made part hereof, and marked "Exhibit A."

2. On December 25th, 1893, said Price deceased, leaving said note at that time past due and unpaid. No payments have ever been made upon said note, except as hereinafter set forth. There is still a balance remaining due and unpaid upon said note.

3. On June 18th, 1894, the defendant made a formal transfer of the pledged stock of The First National Bank of Hillsboro, Ohio, and The Dominion National Bank of Bristol, Va., to one Henry Oetjen, an employee of the defendant, who was pecuniarily irresponsible. Said shares were transferred upon the books of said banks respectively and new certificates therefor issued in the name of said Oetjen, and delivered to him on July 7th, 1894. No money con-

sideration passed to the defendant for said transfer and none was expected, nor did the defendant at that time credit said note with any sum by reason of said transfer, nor was any credit at that time endorsed upon said note, or entered in defendant's books. Said Oetjen endorsed in blank the certificates of stock which were issued to him.

4. Said transfer was made upon the understanding and agreement between said Oetjen and the defendant that the former should hold said stock as security for the indebtedness of the estate of said Price upon said note, applying any amounts which he might realize from said stock as credits upon said note; that in pursuance of this agreement and understanding, said Oetjen subsequently paid the defendant, on account of said note, a sum of money received by him from said Dominion National Bank on account of a reduction in the capital stock and also the amount of certain dividends which he received from time to time upon said Dominion National Bank stock until the same was finally sold by said Oetjen, whereupon the proceeds of said sale were likewise applied by him upon said note.

5. That on February 19th, 1896, the defendant prepared proof of claim against the estate of said Price, and at that time, believing the stocks transferred to said Oetjen to afford a reasonable security for said Exhibit A to the amount of forty-four hundred and eighty-four ($4,484.00) dollars, endorsed the credit for that amount upon said note, which appears upon Exhibit A, and filed its proof of claim against said estate for the balance of the indebtedness upon said note; that no consideration was paid for said credit and the same was not entered upon defendant's books; that all dividends arising upon said distribution of the estate of said Price were applied upon said note.

42

6. That said First National Bank of Hillsboro, Ohio, continued to do business until July 16th, 1896; that from the date of said transfer the stock in said bank at all times appeared on the books of said bank in the name of said Oetjen; that there was nothing on the books of said bank at any time to connect this defendant with said stock or to indicate that this defendant had any interest whatever in the same; that defendant at no time performed any act of ownership of said stock or exercised, or attempted to exercise, any of the rights of a stockholder of said bank or of the Dominion National Bank of Bristol, Va., unless the acts above set forth were, according to legal intendment, of that character. Defendant caused said shares to be transferred to said Oetjen because it was unwilling to assume the risk of the statutory liabilities of a stockholder in respect to said shares."

"EXHIBIT A."

$10,000. X CINCINNATI, O., *March 18th*, 1893.

Ninety days after date I promise to pay myself or order, ten thousand dollars for value received, payable at the office of A. C. Conklin & Co., having deposited or pledged as collateral security for the payment of this note,

50 shrs.	Citizens Nl. Bk. Stock, Hillsboro, O.,	shrs.	$100
20 shrs.	First Nl. Bk. Stock, Hillsboro, O.,	shrs.	100
40 shrs.	Hillsboro Gas Light Co. Stock,	shrs.	50
30 shrs.	Dominion Nl. Bk. Stock, Bristol, Va.,	shrs.	100
100 shrs.	Bk. of Camden Stock, Camden, O.,	shrs.	100
200 shrs.	Bk. of Lynchburg Stk., Lynchburg, O.,	shrs.	50

And I hereby give to the holder thereof full power and authority to sell or collect at my expense all or any part or portion thereof, at any place, either in the city of Cincinnati, or elsewhere, at public or private sale at holder's option, on the non-performance of the above promise, and at any time thereafter, and without advertising the same or otherwise giving to me any notice. In case of public sale, the holder may purchase without being liable to acount for more than the net proceeds of such sale.

O. S. PRICE.

43 Endorsed: O. S. Price.

Forty-four hundred and eighty-four ($4,484.00) dollars, paid on account of within note June 18, '94, being proceeds of sale of 30 shares stock Dominion Natl. Bank and 20 shares of stock 1st National Bank of Hillsboro, O."

The court gave judgment for the defendant, to which the plaintiff excepted. No opinion was filed by the trial judge, but counsel assumed, and we suppose correctly, that the conclusion of the court was that the defendant was not the owner of the shares. That is the essential question in the controversy. The proposition that, in the absence of exceptional circumstances, the question to be settled, is who was the actual owner of the stock at the time when the operations of the bank were suspended, is established by repeated decisions of the Supreme Court. Recent decisions to this effect are, Pauly *v.* State Loan and Trust Co., 165 U. S. 606; Rankin *v.* Fidelity Insurance, etc., Co., 189 U. S. 242.

In dealing with the present case, we are limited to the facts contained in the agreed statement. We can infer no other facts unless they are necessary inferences from those agreed. It has been often said that that which is necessarily implied is as much a part of the agreement as if it were written into it. And this rule of interpretation is applied to the most solemn instruments, *inter partes*, as well as to statutes. But the implication must be one arising from legal intendment and not merely a deduction of fact.

For the purposes of the Banking Act the pledgor of stock is to be regarded as the owner, until and unless something further transpires which operates to transfer the ownership to another. The pledgee may, without himself becoming liable to the contingencies of ownership, have the stock transferred in blank by the pledgor, as was done in this case, but in such case the pledgor does not cease to be the owner in the sense intended by the law, and until the ownership is in some way divested from the pledgor, the latter continues to stand for the stock.

In a suit of this character, we are required to have regard to the relations of those who are concerned with the stock and their
44 dealings with it, and to ascertain who, as between such persons, is the actual owner of it, provided, of course, there is no transfer to the pledgee on the stock book of the bank, and no fraud upon creditors is found in their conduct. From the facts agreed, we think that probably, upon the authority of Anderson *v.* Philadelphia Warehouse Co., 111 U. S. 479, it should be held that the defendant did not become the owner of the stock and so liable to be assessed on account of it, down to the time of the transaction which occurred during the settlement of the estate of Price in the Probate Court. After the death of the pledgor, Price, and on June 18th, 1894, the defendant transferred the stock to Oetjen without consideration given or expected. It was transferred to him on the stock book of the Hillsboro Bank. Oetjen endorsed the new certificates in blank. He was an employee of the bank and irresponsible, and in fact the defendant continued to control the stock notwithstanding the formal transfer to him.

While the Hillsboro National Bank was continuing to do business, and on February 19, 1896, the defendant filed a claim against the estate of Price, in the proper Probate Court, for the amount due on the note less the sum of $4,484, which it had endorsed as a sum "paid on account of within note June 18th, '94, being proceeds of sale of 30 shrs. stock Dominion Natl. Bank and 20 shares of stock 1st National Bk. of Hillsboro, O." The date, June 18th, '94, was the date of the transfer of the stock it made to Oetjen. It is to be inferred that the claim was allowed, as it is stated, not only that the claim was filed, but "that all dividends arising upon said distribution of the estate of said Price were endorsed upon said note." Afterwards, on July 6th, 1896, the Hillsboro bank ceased to do business.

It is stated in the agreed statement of facts that the transfer of the stock to Oetjen was made upon the agreement and understanding between him and the defendant that he should hold the stock as a security for the indebtedness of the estate of said Price upon the note; but it is not stated that this agreement was made known to the representative of Price's estate. Nor is it stated that the
45 act of the defendant in applying dividends from the estate upon the note was made known to said representative of the estate. And the maxim applies, *de non apparentibus et non existentibus eadem est ratio.*

Counsel for the defendant, in their brief, advance the following argument:

"It is said that this indorsement was evidence tending to show that the defendant had intended the transfer to Oetjen to be a sale absolute, and not merely by way of security. If that claim were sound, still the court has found that there was no intent of that character."

But the statement of the facts could not be affected by a finding of the court, any more than could a special verdict. It is, however, a mistake to say that the court found any facts. The record states that "the court, upon consideration of the pleadings, evidence and

arguments of counsel, finds the issues joined in favor of the defendant." But this means nothing more than that the court found the issues of law in favor of the defendant. The case in all particulars is like that of Supervisors *v.* Kennicott, 103 U. S. 554, where the court said

"It is true that in the judgment as entered, it is stated that the court found the issue in favor of the plaintiffs; but that, when read in connection with the bill of exceptions, is no more than a declaration that the court found the law to be in favor of the plaintiff on the case as stated."

In presenting and obtaining the allowance of its claim, the defendant represented that it had sold the stock and that it had appropriated the proceeds to the payment of the note; and the adjustment of its claim was made upon that footing. When it is said in the agreed statement "that no consideration was paid for said credit," meaning the endorsement of the $4,484, the interpretation must be that no other consideration "was paid" than such as the transaction itself imports. And granting that, notwithstanding the defendant's representation, there had in fact been no actual sale of the stock, we think the result of the proceedings in the Probate Court upon

46 the defendant's representation and claim was, as between the Price estate and the defendant, to transfer the ownership of the stock to the defendant for the consideration represented in the endorsement, and that the defendant could not thereafter claim against the estate that it had not appropriated the stock in satisfaction *pro tanto* of the sum due on the note. It may be that the representative of the Price estate might once have had some remedy to recover the stock, but he has made no claim for relief against the transaction, and it is manifest that he would now have no motive for doing so. The stock has become worse than useless. Whatever the undisclosed motive of the defendant may have been, we think the legal import of what was actually done was that it acquired the stock, and that the estate of Price no longer held it either for the benefits or burdens of ownership. No one could believe that the defendant when its claim was adjusted by the Probate Court expected to make further answer to the estate for this stock, or intended anything else than a conversion of it into its own property at the price for which it reported the stock sold. It would be unjust for it now to cast what has proved to be a disadvantage upon the party whom it dispossessed. The burden of the assessment must fall upon one of these parties, and we think the receiver has made the right selection.

The judgment should be reversed with costs and direction given to the court below to enter a judgment for the plaintiff for the amount of the assessment with interest from May 27th, 1897, the time when it became payable.

47 And afterwards, to-wit on the 14th day of July, A. D. 1905, a Petition for writ of error was filed in said court clothed in the words and figures following, to-wit:

United States Circuit Court of Appeals, Sixth Circuit.

No. 1386.

JOHN HULITT, as Receiver of the First National Bank of Hillsboro, Ohio, Plaintiff in Error,

vs.

THE OHIO VALLEY NATIONAL BANK, Defendant in Error.

Petition for Writ of Error.

Your petitioner, The Ohio Valley National Bank, defendant in error in the above entitled cause, respectfully shows that said cause is pending in this court; that a judgment was therein rendered on or about the 2nd day of May, 1905, reversing a judgment of the Circuit Court of the United States for the Southern District of Ohio,
48 Western Division, and directing that judgment be entered in favor of the plaintiff, towit: this defendant in error in these proceedings; that the matter in controversy in said suit exceeds one thousand dollars ($1000) exclusive of interest and costs; that the jurisdiction of neither of said courts was dependent in any wise, upon the opposite parties to the suit or controversy, being aliens and citizens of the United States or citizens of different states; that this cause does not arise under the patent laws, or under the revenue laws, or under the criminal laws of the United States; that it is not an admiralty case, and that it is a proper case to be reviewed by the Supreme Court of the United States upon writ of error, being a cause wherein the plaintiff below is the receiver of a bank organized under the national banking laws of the United States, said receiver being appointed as such by the Comptroller of the Currency of the United States in accordance with the laws of the United States, and the defendant below being a bank organized under the national
49 banking laws of the United States.

Wherefore your petitioner would respectfully pray that a writ of error be allowed in the above entitled cause, directing the clerk of this court to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States in order that the errors complained of in the assignment of errors herein filed may be reviewed, and if error be found, corrected, according to the laws and customs of the United States.

THE OHIO VALLEY NATIONAL BANK,
By ROBERT RAMSEY AND
J. J. MUIR, *Its Attorneys.*

The prayer for a writ of error contained in the foregoing petition is allowed and the Clerk of this Court is directed to transmit the record and proceedings had in said cause to the Supreme Court of the United States, as in said petition is also prayed.

HENRY F. SEVERENS,
U. S. Circuit Judge.

Dated July 25th, 1905.

50 And on the same day, to-wit: the 14th day of July, A. D. 1905, Assignment of Errors was filed in said Court, clothed in the words and figures following towit:

United States Circuit Court of Appeals, Sixth Circuit.

No. 1386.

JOHN HULITT, as Receiver of the First National Bank of Hillsboro, Ohio, Plaintiff in Error,

vs.

THE OHIO VALLEY NATIONAL BANK, Defendant in Error.

Assignment of Errors.

Now comes the defendant in error, The Ohio Valley National Bank, by Robert Ramsey and J. J. Muir, its attorneys, and shows that in the record and proceedings in the United States Circuit Court of Appeals, Sixth Circuit, in the above entitled cause, and in the rendition of the final judgment therein, manifest error has intervened to the prejudice of this defendant in error, towit:

51 1. Said court erred in entering judgment reversing the judgment of the United States Circuit Court for the Southern District of Ohio, Western Division, and in directing that court to enter a judgment in favor of the defendant, towit: the above named plaintiff in error.

2. Said court erred in not affirming the said judgment of the Circuit Court of the United States for the Southern District of Ohio, Western Division.

3. Said court erred in finding that the plaintiff, towit: this defendant in error was a stockholder holding and owning shares of stock of the First National Bank of Hillsboro, as alleged in the petition, and that it was subject to an assessment or liability upon the same for the benefit of the creditors of said company.

4. Said court erred in other particulars apparent upon the record.

Wherefore defendant in error prays that for the errors aforesaid, and for other errors appearing in the record of said Circuit Court of Appeals in the above entitled cause to the prejudice of the

52 defendant in error, said judgment of said court may be reversed, annulled and for naught esteemed, and that this cause be remanded to said Circuit Court of Appeals with instructions to enter a judgment in favor of this defendant in error, or for such further proceedings in said cause as may be determined by this honorable court, to the end that justice be done in the premises.

THE OHIO VALLEY NATIONAL BANK,
By ROBERT RAMSEY AND
J. J. MUIR, *Its Attorneys.*

53 And afterwards, to-wit: on the 21st day of July, A. D. 1905, a bond was filed in said Court, clothed in the words and figures following, to-wit:

Know all men by these presents, That we, The Ohio Valley National Bank, as principal, and Joseph Rawson and T. J. Davis, as sureties, are held and firmly bound unto John Hulitt, Receiver, of the First National Bank of Hillsboro, Ohio, in the full and just sum of Five Hundred Dollars ($500.00) to be paid to the said John Hulitt, Receiver, certain attorneys, executors, administrators or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th day of July in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a Circuit Court of Appeals of the United States for the Sixth Circuit, in a suit depending in said Court, between the Ohio Valley National Bank and John Hulitt, Receiver, a
54 judgment was rendered against the said Ohio Valley National Bank and the said Ohio Valley National Bank having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said John Hulitt, Receiver, citing and admonishing him to be and appear at a session of the Supreme Court of the United States, October term 1905.

Now the condition of the above obligation is such, That if the said Ohio Valley National Bank shall prosecute to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

OHIO VALLEY NATIONAL BANK, [SEAL]
By C. B. WRIGHT, *Pres.* [SEAL]

Sealed and delivered in presence of—
(Signed) JOSEPH RAWSON.
(Signed) J. J. DAVIS.

Approved.
(Signed) H. F. SEVERENS,
Circuit Judge.

55 And afterwards, towit: on the 25th day of July, an entry was made on the journal of said court, clothed in the words and figures following, to-wit:

Journal C, page 194.

United States Circuit Court of Appeals for the Sixth Circuit.

No. 1386.

JOHN HULITT, Receiver of the First National Bank of Hillsboro, O.,
vs.
THE OHIO VALLEY NATIONAL BANK.

Order Allowing Writ of Error.

Now comes counsel for the Ohio Valley National Bank and filed its petition for allowance of a writ of error to the Supreme Court of the United States together with its assignments of error in such behalf, and for satisfactory reasons to the Court appearing the prayer of said petition is hereby granted and such writ of error allowed with the usual citation in such cases upon giving a bond in the sum of Five Hundred ($500) Dollars.

HENRY F. SEVERENS,
U. S. Circuit Judge.

Dated July 25th, 1905.

56 *Writ of Error.*

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit, ss:*

The President of the United States to the Honorable the Judge of the United States Circuit Court of Appeals for the Sixth Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States Circuit Court of Appeals, before you, or some of you, between John Hulitt, Receiver of the First National Bank of Hillsboro, Ohio, Plaintiff in error and Ohio Valley National Bank, Defendan*d* in Error, a manifest error hath happened, to the great damage of the said Ohio Valley National Bank as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the * 24th day of August next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the 22d day of July, in the year of our Lord one thousand nine hundred and five, and of the Independence of the United States of America the one hundred and thirtieth.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

B. R. COWEN,
Clerk of the Circuit Court of the United States, Southern Dist. Ohio.

Allowed by
HENRY F. SEVERENS,
U. S. Circuit Judge.

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*Not exceeding 30 days from the day of signing the citation.

57 The Supreme Court of the United States.

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit, ss:*

Supreme Court of the United States.

To John Hulitt, Receiver of the First National Bank of Hillsboro, Ohio, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington, D. C., on the * 24th day of August next, pursuant to a Writ of Error, filed in the Clerk's Office of the United States Circuit Court of Appeals for the sixth circuit, wherein Ohio Valley National Bank is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 25th day of July, in the year of our Lord one thousand nine hundred and five, and of the Independence of the United States of America the one hundred and thirtieth.

HENRY F. SEVERENS,
U, S. Circuit Judge.

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*Not exceeding 30 days from the day of signing.

I hereby accept service of the within citation, this 5th day of August 1905.

HENRY M. HUGGINS,
Attorney for Def't in Error.

58 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings of this Court, together with the original writ of error and citation in the case of John Hulitt, Receiver of the First National Bank of Hillsboro, Ohio, *vs.* The Ohio Valley National Bank No. 1386, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court at the City of Cincinnati, Ohio, this 8th day of August A. D. 1905.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

59 Supreme Court of the United States, October Term, 1905.

No. —.

THE OHIO VALLEY NATIONAL BANK, Plaintiff in Error,
vs.
JOHN HULITT, Receiver, Defendant in Error.

Memorandum as to Printing Record.

Plaintiff in error states that it intends to rely wholly upon the assignments of error based upon the rulings of the court on the agreed statement of facts as the same appears in the transcript of the record, and that the deposition of one Henry Oetjen is immaterial and not necessary to a consideration of any of said assignments of error.

Wherefore plaintiff in error requests that said deposition be omitted from the printed record of this cause.

ROBERT RAMSEY,
Counsel for Plaintiff in Error.

The defendant in error hereby consents to the omission of the deposition above referred to from the printed record of this cause.

HENRY M. HUGGINS,
Counsel for Defendant in Error.

60 [Endorsed:] File No. 19,891. Supreme Court U. S. October Term, 1905. Term No. 389. The Ohio Valley, National Bank, Pl'ff in Error, *vs.* John Hulitt, Receiver &c. Designation by counsel for plaintiff in error of parts of record to be printed & proof of service of same. Filed September 2d, 1905.

Endorsed on cover: File No. 19,891. U. S. Circuit Court of Appeals, 6th circuit. Term No. 108. Ohio Valley National Bank, plaintiff in error, *vs.* John Hulitt, Receiver of the First National Bank of Hillsboro, Ohio. Filed August 30, 1905. **File no 19,891.**